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CONFIDENTIAL SETTLEMENT COMMUNICATION

VIA E-MAIL

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RE: Onondaga Lake Superfund Site (EPA ID#NYD986913580;
NYSDEC Inactive Hazardous Waste Site Registry #7-34-030)

Dear Ms. Sheen and Ms. Charney:

Thank you for supplying additional nexus documentation supporting USEPA and NYSDEC's allegation that Syracuse China Company, has potential responsibility in connection with the Onondaga Lake Superfund Site. We have reviewed that information carefully, along with other documents in the public record, to prepare this response which demonstrates that there is no substantiation of releases from the Syracuse China Company site to the Onondaga Lake Site.

This letter is prepared on behalf of Syracuse China Company, a Delaware corporation that changed its name in October 1995 from LG Acquisition Corp., which was the entity that Libbey Inc. formed in June 1995 to acquire certain assets relating to the unincorporated Syracuse China division of Pfaltzgraff Company. In this acquisition, the only real property LG Acquisition Corp. acquired was the Syracuse China manufacturing facility located on Court Street at Factory Avenue. The acquisition specifically excluded the West Fayette Street facility which had been operated by, among others, the former Onondaga Pottery, or other former operating locations, if any. Thus, this response is confined to the Court Street / Factory Avenue facility.

For ease of reference, this response quotes key statements from the nexus report provided by the Department, which statements Syracuse China Company specifically rejects as unsubstantiated conjecture. This response then sets forth the available information in rebuttal. The overwhelming conclusion from this information is that the Court/Factory facility was not a source of hazardous substances to Ley Creek, much less to Onondaga Lake.

1. Source: *PRP Nexus Chart (Letter from Lauren P. Charney, Esq., USEPA, dated April 23, 2009).*

   Nexus Allegation: "Facility [2900 Court Street] manufactures vitreous ceramic hotel china and china dinnerware. From 1929-1994, Syracuse China operated a 13-acre on-site industrial landfill bordering Ley Creek. The landfill is listed as a NYS Class 2 inactive hazardous waste site due to the presence of lead in soil and groundwater. Copper, chromium, arsenic, zinc and mercury also found in groundwater at levels that exceeded NYSDEC standards prior to remediation of landfill. Lead present in Ley Creek at elevated levels relative to upstream samples."

   Response of Syracuse China:

   - The first sentence is accurate.

   - It is also correct that Syracuse China operated a 13.6-acre on-site landfill, which is part of a 21-acre inactive hazardous waste "Site" encompassing the landfill, remediated wetlands, and the former ponds. However, it is an exaggeration to characterize this landfill as "bordering Ley Creek." There are (and were) several disturbed and man-made features between Ley Creek and the landfill at the Syracuse China Court Street/Factory Avenue site. These features include: (i) former Ley Creek dredgings/wetlands located on a wide strip of General Motors-owned property adjacent to Ley Creek; (ii) Factory Avenue itself; (iii) the Factory Avenue stormwater drainage ditch; (iv) a right-of-way for buried natural gas pipe; and (v) a sizeable wetland area on the Syracuse China site. These areas afforded a substantial buffer against the possibility of migration of materials in the landfill or from other site operations to Ley Creek. Ley Creek is over 200 feet from the closest site boundary, (which would be the edge of the northern wetlands), and the landfill and settling ponds are at a substantially greater distance from this site perimeter.

- The third and fourth sentences state that the landfill is a source of contamination to groundwater at the Syracuse China site and creates an inference that such groundwater contamination has migrated to Ley Creek and from there had the potential to impact Onondaga Lake. These sentences are presumably based upon conclusions contained in initial investigation reports which were subsequently revised as investigations at the Syracuse China site progressed. The landfill itself was remediated pursuant to a Consent Order between NYSDEC and Syracuse China bearing Index No. A601408802. This order initially required actions to be taken to address groundwater contamination suspected to be emanating from the landfill. However, the NYSDEC-approved Final Engineering Report eliminated the requirement for a groundwater interceptor system because pre-design groundwater data demonstrated that lead in groundwater existed primarily in the eastern portion of the landfill and as a result of sample turbidity. NYSDEC determined that the impermeable cap on the landfill and other remedial measures adequately addressed localized groundwater quality issues by removing any potential direct contact with landfill materials, minimizing infiltration, and lowering the groundwater table. It, therefore, did not require additional remedial measures to address groundwater.

  Further, no exceedences of NYSDEC standards were found at any time in groundwater beyond the immediate area of the landfill footprint [two slight detections in MW-8 (which is adjacent to the landfill footprint) of 0.040 mg/l on March 23, 2004 and 0.052 on September 28, 2005, were attributed to turbidity in the sample, a conclusion with which NYSDEC agreed]. In short, there is no evidence whatsoever of actual migration of contaminants via a groundwater pathway into Ley Creek (nor from there into Onondaga Lake) from the Syracuse China site. The statements to the contrary are pure conjecture.

- Syracuse China agrees that lead may have been detected in Ley Creek at elevated levels but understands that these are attributable to upgradient sources or vehicle emissions/runoff from road traffic (including the NYS Thruway, which is located in close proximity to Ley Creek), rather than the Syracuse China operations. It appears that the reviewing consultant may have erroneously attributed an outfall in Ley Creek to Syracuse China operations. Syracuse China has no outfall discharging to Ley Creek itself.

2. Source: *NYSDEC Superfund Standby Program Report "Site ID 304: Syracuse China Company, Site Summary Report, Onondaga Lake Project, Task 5:104(e) Review," TAMS Consultants, Inc. (March 2002) [referred to as "TAMS Report"] – "Sec. 3.0 -- Potential Pathways for Release of Hazardous Substances to Lake System"*

   Nexus Allegations: The TAMs Report makes numerous conclusory statements based upon a partial (incomplete) review of available documents. It then identifies a number of alleged "potential" pathways for releases to the "Lake System," apparently deeming a potential (but undocumented) pathway for release to the wetlands on-site at some

distance from Ley Creek to be an actual discharge to the Creek, and inferring therefrom that a potential discharge to Ley Creek thus constitutes a release to the Lake itself. The following lists the principal potential mechanisms identified by TAMS and responds to each.

a) **Soil/Sediment**: The RI/FS and ROD for the Syracuse China site document that soil and sediment at the Syracuse China site were contaminated with lead, and the TAMS report acknowledges that "this contamination has been addressed through an RI/FS and a ROD" remedy which included excavation of approximately 10 acres of wetland sediments and fill from the eastern landfill area, and consolidation and capping of the material under a geomembrane cap in the western portion of the landfill. The TAMS report does not identify any area of contamination that failed to be addressed via this remedy, and thus soil and sediment sources do not appear to be an alleged basis of contribution to Ley Creek or Onondaga Lake.

b) **Surface Water**: The TAMS Report states that Syracuse China discharges under a SPDES permit directly to settling ponds on the eastern portion of the landfill, "…which flows to the regulated wetlands at Outfall 001…and from the wetlands through a culvert under Factory Avenue directly to Ley Creek…." The TAMS report states that samples of surface water from the wetland were collected during the RI which showed elevated lead, and that maximum concentrations were detected near the SPDES Outfall. There are no allegations of detections of lead in any samples taken in the culvert or on the GM-owned dredging area that lie between the wetland and the Syracuse China site. Thus all allegations appear to be based entirely upon lead detected *on-site* within the area remediated under the Syracuse China site order. TAMS acknowledges the remediation but confined its document review to reports developed prior to the implementation of the remediation. Thus the only alleged basis for surface water contribution *off-site* to Ley Creek, or Onondaga Lake, is an unsubstantiated inference that the wetland surface waters eventually reach these bodies as a matter of general watershed drainage. The TAMS report also speculates that "[s]pills and leaks of materials from the on-site drum storage areas and unpermitted releases from process operations are *potential* sources of contamination to *off-site* surface waters." [Emphasis added.] The TAMS report offers no data or documentation to support the speculation that these operational areas had releases that actually reached the Creek or the Lake.

c) **Groundwater**: As with the above areas, the TAMS report references on-site groundwater data that were collected during the RI process and which were summarized in the ROD. TAMS did *not* review the RI itself or any of the underlying documents or correspondence to the agency, and acknowledges that groundwater data collected following remediation of the landfill were not reviewed by it in 2002, even though the remedy had, as of that time, been substantially completed. TAMS notes that the original proposed remedy required an upgradient groundwater intercept system to be designed to intercept

groundwater passing through the landfill to prevent leaching of lead into groundwater, and that the trench for this system was to have been directed into the wetland. This is apparently the exclusive basis for the allegation of discharges via a groundwater pathway to Ley Creek and Onondaga Lake. As stated above, this pathway was not considered a threat at the time the remedy was approved, and the groundwater intercept was eliminated for that reason.

d) **Air**: The TAMS report states that "[a]ir emissions represent a local source of contaminants to the atmosphere with potential deposition to the ground surface and subsequent transport to Ley Creek and possibly Onondaga Lake via surface runoff." It recites various on-site operations that it speculates could have had lead emissions to the air but offers no climatological or analytical support to show that this was an actual source of any levels of contaminants to the Creek or Lake. It is pure conjecture.

e) **County Sewer System**: The TAMS report describes a short period during the Syracuse China operating history during which there were discharges to the OCDDS sanitary sewer system pursuant to pre-treatment requirements of its industrial wastewater discharge permit. The TAMS report does not explain how such permitted discharges to the treatment system are a basis for liability by the industrial discharger for Ley Creek or Onondaga Lake.

Responses of Syracuse China:

a) **Soil/Sediment**: Syracuse China implemented the remedy under its consent order to address all impacted areas at the Syracuse China site, including in the wetland. These areas did not extend beyond the bermed area created by the foundation for construction of Factory Avenue or into the GM-owned dredging area that exists between the wetland and Ley Creek. Thus, there is nothing to support the inference of discharges into the Creek or Onondaga Lake itself.

The RI Report (which TAMS did not read) discusses that samples of landfilled materials (biscuit china scrap, glost china scrap, gypsum mold scrap, refractory scrap, wastewater filter cake) were submitted for Toxicity Characteristic Leaching Procedure (TCLP) analysis. Only glost china scrap had detectable concentrations of any TCLP parameter, with a lead concentration of 1.0 mg/L, which is below the maximum allowable concentration of 5.0 mg/L for lead. The biscuit china scrap is composed of fired ceramic pieces which have not been decorated or glazed (i.e., no lead), and since 1990 approximately 90% of such material has been recycled as feed-stock. Glost china scrap is composed of glazed or decorated china which has been fired two or more times so that any lead is vitrified. Gypsum mold scrap is comprised of plaster of Paris (i.e., has no lead). Refractory scrap is magnesium aluminum silicate or similar materials (i.e., has no lead), and wastewater filter cake is raw clay prior to any glaze process (i.e., has no lead). Since 1992 this material has been sent off-site for disposal. Roux Associates, in the Final Engineering Report for the landfill, concluded that the

landfill waste "primarily consists of relatively inert materials" and cinders, wood, and fiberglass insulation. Thus, the landfill itself is not a source of lead discharges.

b) **Surface Water**: In the absence of any analytical data cited in the TAMS report that contaminants detected and remediated on-site actually reached and were detected off-site, it is difficult to respond to this vague allegation. In the mid-1990's, when the Syracuse China on-site remediation was being implemented, NYSDEC clearly did not consider this to be a significant potential pathway for migration of contaminants off-site as it required no investigative or remedial actions extending beyond the on-site wetlands area closest to the settling ponds. Syracuse China's remedial consultant concluded that any lead that may have been borne by surface waters (principally stormwater runoff from the settling ponds to immediately adjacent areas) was transported in heavier clay that became deposited in areas of the wetlands that were closest to the ponds. These areas were excavated and deposited under the landfill cap during the remediation, which NYSDEC approved. It is hard to conceive that contaminated sediments or surface waters made it past the cleansing effect of the on-site wetlands (especially given the limits of the detectable lead within that wetland), but, even if one *assumes* that lead-containing sediments entrained in stormwaters could have done so, the buffer area between the wetland, the road and the Creek was dredged repeatedly over the years by GM (related to PCB contamination). Thus, it is even more improbable to conceive that anything that may have been deposited there could have become a further source that could have migrated through this area, into Ley Creek itself, much less on into Onondaga Lake. The allegation thus appears to require several levels of unsubstantiated supposition and inference, while actual data demonstrates a limited area of on-site impacts that were remediated under NYSDEC supervision and oversight.

c) **Groundwater**: At the time it prepared its 2002 report, TAMS apparently was unaware of the fact that, as previously discussed, the groundwater intercept system was eliminated (approved by NYSDEC in 1998) based upon further review of the data. There are no data showing that groundwater migration off-site was a viable pathway, and the trench that was purportedly going to be discharging to the wetland was never constructed because NYSDEC determined that the groundwater pathway was not viable, warranting no on-site remedial actions, much less posing a risk to off-site receptors.

d) **Air**: Syracuse China does not believe that NYSDEC and USEPA are seriously alleging that air deposition is a significant contributor to remedial costs incurred in Onondaga Lake as a general proposition, or that the Syracuse China facility was an emitter of sufficient amounts of lead to the air so as to pose a risk of discharges into Ley Creek and Onondaga Lake. In the unlikely event air is considered to be a significant potential pathway to the Lake site, the Court Street / Factory Avenue site is situated to the east of Onondaga Lake and south of Ley Creek and thus we would expect that any negligible air emissions from the

site would generally migrate *away from* the Creek and the Lake under the most common weather patterns, particularly in comparison to other potential sources much closer to, and upwind of, the Lake and compared to lead generally present in the atmosphere from non-industrial sources such as vehicle exhaust and power plant emissions.

e) **County Sewer System**: Discharges made by Syracuse China to the OCDDS system were intermittent and pursuant to permit. Such discharges were made following pre-treatment via a filter press and microfiltration system to remove fine solids and by a chemical precipitation and flocculation process followed by clarification by sedimentation. Syracuse China asserts its permit as a shield for liability relating to its own discharges, and the OCDDS federal permit for any residuals in discharges following treatment by the publicly owned treatment works.

3. Source: *NYSDEC Superfund Standby Program Report "Site ID 304: Syracuse China Company, Site Summary Report, Onondaga Lake Project, Task 5:104(e) Review," TAMS Consultants, Inc. (March 2002), "Sec. 4.0 Likelihood of Release of Hazardous Substances to the Lake System."*

Nexus Allegations:

a) **Documented Releases**:

i. The TAMS report references two historical spills consisting of a 1980 spill of No. 6 fuel oil entirely contained within a diked area, and a 1991 detection of BTEX compounds detected during excavation of an underground pipe, both of which were remediated. It does not appear that these are an alleged basis of liability for Onondaga Lake or Ley Creek remediation.

ii. The TAMS report lists 68 days on which OCDDS permit limits were slightly exceeded from 1992-1994, but does not articulate how these are a basis for liability for discharges to Onondaga Lake.

iii. The 2002 TAMS report also identifies "on-going discharges" to the settling ponds under a SPDES permit for raw material batching, ware forming, finishing and drying, biscuit ware cleaning, plaster mold making and non-contact cooling water. The report does not detail any factual bases for assuming that any on-going materials discharged to settling ponds is a current source of releases to Ley Creek or beyond. It also describes various wastewater discharges to the municipal sewer system as previously discussed and the possibility of unauthorized third party disposal in the landfill until such practices were prevented by installation of fencing and barriers.

b) **Threat of Releases**: Additional generalized references are made to the landfill, sewer discharges, surface water and sediment levels, all of which related to the pre-remedial time frame (even though the remediation had been substantially completed prior to TAMS' review and TAMS' review did not encompass the various remedial and post-remedial reports submitted by Syracuse China).

On pages 24-25, the TAMS Report discusses sediment sampling conducted by NYSDEC in Ley Creek in 1996, including 10 locations downstream of Syracuse China "…beginning adjacent to the Syracuse China outfall (Station L10) and continuing down to the mouth of Ley Creek (Station L1). Two surface sediment samples were collected "adjacent to the Syracuse China site; sample L10A was collected 2 feet downstream of the Syracuse China discharge point, and sample L10B was collected 10 feet downstream of the discharge." Three locations were sampled upstream of Syracuse China in the main branch of Ley Creek beginning 3,000 feet upstream of the Site (Stations L11, L12, and L13). The report notes that lead in sediments upstream of the Syracuse China outfall were less than the NYSDEC Lowest Effect Level sediment criterion but "increased at the station just downstream of the Syracuse China discharge" and at the next station "3,000 feet downstream of the Syracuse China discharge." The lead concentrations at these locations did not exceed the NYSDEC Severe Effects Level, but did so further downstream. This information is apparently used to allege that lead is being contributed to the Creek from the Syracuse China discharge points in Ley Creek and thereby are potentially contributing to the presence of lead in Onondaga Lake.

Responses of Syracuse China:

a) **Documented Releases**:

- The fuel oil and BTEX spills require no response. A subsequent investigation was performed in 1995 in the areas of the fuel oil spills and the results were below NYSDEC reporting thresholds.

- It is Syracuse China's understanding that the sewer discharges went to the OCDDS POTW for treatment. These exceedences were resolved through penalties and there is no case to date in New York (or nationally) in which CERCLA liability was imposed on an industrial discharger for discharges from a POTW to a receiving body. Moreover, any exceedences were at levels so low as to be insignificant in the context of the volume of waters discharged to the sewer system by all up- and down-stream industrial discharges, not to mention the treatment process at OCDDS.

- The 2002 TAMS report cites information regarding "on-going discharges" that pre-dated the site remediation. At the time the four interconnected settling ponds were in use for discharges, the processes generated such wastes such as plaster, calcined alumina, ground quartz, clay, feldspathic

rock, clay dust, boiler blowdown and condensate. In July 1990 the changes made to the process operations eliminated the lead materials (glaze and pigments) from discharges to the settling ponds, and recycled them in a closed-loop system or put them through a pretreatment system that discharged to the POTW. In short, the TAMS report is patently incorrect. The TAMS report again cites no specific information to support allegations that the landfill or POTW discharges are a basis for releases to Ley Creek or Onondaga Lake.

b) **Threat of Releases**:

- First, had TAMS reviewed the SPDES permit and the 1992 Stearns & Wheler Stormwater Discharge Application Report, it would have noted that Syracuse China does not have an outfall in, on or at Ley Creek. Outfall 001 is at the outlet of the settling ponds on the Syracuse China property prior to their discharge point into the wetlands which are also entirely on the Syracuse China property and more than 200 feet from the culvert crossing under Factory Avenue. Outfall 001A (combined stormwater and discharge from the wetlands) is also entirely on Syracuse China property at the juncture of the wetlands and a drainage ditch off of Factory Avenue (which also receives stormwater flow from other area industrial sources, Factory Avenue road run-off, and municipal overflow). Even this point is still more than 200 yards away from Ley Creek itself, past the dredged lands owned by General Motors and across Factory Avenue. We do not know who owns the outfall referenced in the 1996 NYSDEC sampling data, but it is not a Syracuse China outfall (possibly it includes stormwater run-off from non-operational portions of the west side of Syracuse China such as a parking lot and boiler house, and run-off from Lyncourt Circle and surrounding areas). Further, station L10A, which is two feet downstream of the outfall attributed to Syracuse China (and thus would, arguably, be the most immediate interception point for Syracuse China discharges even if NYSDEC's incorrect view were to be adopted), is within the Lowest Effect Level threshold. These data are also absolutely clear that there are upgradient lead sources, and cumulative downgradient lead sources, accounting for levels of lead detected at one point in Ley Creek. And, even under the worst possible interpretation of such information, Ley Creek is a miniscule contributor of lead to Onondaga Lake, and lead was not a driver of any remedial actions within Onondaga Lake inasmuch as it was co-located with other contaminants that would have necessitated remedial action even if no single molecule of lead were present.

General Position of Syracuse China: In prior responses to USEPA information requests pursuant to Section 104(e) of CERCLA, and in other communications to NYSDEC, Syracuse China stated that there is no reason to believe (and no information has been produced to date to suggest) that suspended solids (including metals) in waste waters discharged from the

plant pursuant to its SPDES permit would have entered Onondaga Lake or its tributaries. This is because since the early 1990's the wastewater containing lead was treated by a filtration process (including a filter press followed by a microfiltration system to remove fine solids from waste water from glaze batching and application processes, and chemical precipitation and flocculation followed by sedimentation for wastewater from color preparation and ware decorating processes) and then discharged to the local publicly operated water treatment facility. Prior to the 1990's, the wastewaters were subjected to coagulation prior to discharge to the settling ponds and cleansing. Even if suspended solids in the wastewater could have reached Ley Creek (no data to date supports even that proposition), Ley Creek has been dredged on at least four occasions beginning as early as 1970 to remove accumulated sediments. It is highly improbable (and no evidence has been identified to support the contention that) any hazardous substances discharged by the Syracuse China assets acquired by LG Acquisition Corp. (now known as Syracuse China Company) historically contributed or currently contributes to any conditions in Onondaga Lake that resulted in costs to USEPA or NYSDEC.

Although elevated levels of lead were detected in limited areas in wetland areas downgradient of the settling pond system that previously existed at the Court Street / Factory Avenue site, the settling ponds were reconstructed, the impacted wetlands areas were restored, the landfill was capped and long term monitoring was instituted, all under the direct supervision of NYSDEC. In no event was contamination from these features documented to have migrated (by any potential pathway) beyond the areas addressed by on-site remedial measures.

We have reviewed the technical documents available on the USEPA and NYSDEC websites and provided to us in response to FOIA/FOIL requests. We are unable to identify any documentation supporting the proposition that Syracuse China Company is a potentially responsible party at the Onondaga Lake Site or that it has any responsibility for costs beyond those already reimbursed in connection with implementing the above-referenced Consent Order. At the Ley Creek Dredging sub-site the only contaminant of concern is PCBs, which is not a substance used or discharged by Syracuse China, and it appears that all costs associated with this sub-site have been recovered from another PRP (General Motors). No analytical data developed at the Syracuse China site itself, or in connection with the Ley Creek Dredging sub-site, supports the inference that other hazardous substances, such as lead, originated from the site into the Creek or to the Lake. Indeed, the Natural Resource Damage Assessment for Onondaga Lake does not identify lead as a "contaminant of concern." No specific remedial actions in Onondaga Lake or Ley Creek are associated with lead, and where lead does occur within the Lake, it is co-located with other contaminants that would have required remedial action even if no lead were present.

To the extent various allegations are based upon generalized statements of surface waters or air emissions that "could have" made their way into Ley Creek and from there to Onondaga Lake, Syracuse China notes that there are approximately 150 industries in the Ley Creek watershed area, including numerous metropolitan waste water treatment facilities and untreated stormwater discharges, that potentially flow into Ley Creek and Onondaga Lake. In the Citizen's Participation Plan for Onondaga Lake (page 11), it is acknowledged that the Onondaga County Metropolitan Syracuse Treatment Plan released ammonia and phosphorous to the lake (in 1990 as much as 58% of the total phosphorous loading to the lake, and as much as 90% of the

ammonia loading). The report also acknowledges that there are **nearby** Combined Sewer Overflows (CSO's) that discharge into Onondaga Lake, two of which discharge into Ley Creek.

Any contribution of lead to Ley Creek (and from there to Onondaga Lake) is based on supposition, inference and conjecture. No data have been developed that document that lead (or any other contaminant) was transported from on-site operations to off-site locations, much less into Ley Creek or even more remotely to Onondaga Lake. Even if such conjecture is given credence, no remedial costs have been incurred directly relating to the primary contaminant of concern which the TAMS report attributes to Syracuse China operations.

With the recent decision in *Burlington Northern & Santa Fe Railroad, et al. v. United States, et al.,* 556 U.S. ___ (May 4, 2009) [68 ERC 1161 (2009)], it is clear that if there is a reasonable basis for apportionment of liability EPA must determine the contribution of each defendant and cannot hold the defendants jointly and severally liable. In that decision, the court utilized three relatively simple factors to determine a reasonable basis of contribution: the proportion of the facility property owned by the defendants; the amount of time that the defendants operated at the facility property; and the proportion of the total remediation costs associated with the type of contaminants present on the facility property. In the Onondaga Lake site, it is quite clear that lead is not a driver of any remedial costs, and that even if lead had been a driver of remedial costs, the percentage to be attributed to contributions originating at Ley Creek is miniscule. Even more significantly, the Syracuse China Factory Rd/Court Street site has been demonstrated as outlined above to have no (or at worst a very remote) potential risk of discharges leaving the site, much less reaching Ley Creek, and even more improbably having the potential to reach Onondaga Lake. Although Syracuse China strongly disputes any liability, it is documented that there were detections of lead upgradient of the Syracuse China Company site in Ley Creek, so that, even giving the most favorable interpretation of facts to the unsubstantiated nexus assertions governments, in the worst case the potential divisible share of Syracuse China could only be a tiny fraction of the very miniscule fractional share of Ley Creek's contributions, and an infinitesimal share of the Onondaga Creek total allocation.

The foregoing are submitted without prejudice to or waiver of any and all defenses, and without admission of liability and any statement of fact, conclusion of law. The foregoing is submitted as a confidential settlement document.

Sincerely,

Jean H. McCreary
Partner, Energy & Environment

cc: Susan Kovach, Esq. (Libbey Inc.)

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